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ATTORNEY FOR APPELLANT:

CHRIS P. FRAZIER
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General Of Indiana

JODI KATHRYN STEIN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

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|-----------------------|---|-----------------------|
| REGINALD DURR, |) | |
| |) | |
| Appellant-Petitioner, |) | |
| |) | |
| vs. |) | No. 49A02-0607-CR-611 |
| |) | |
| STATE OF INDIANA, |) | |
| |) | |
| Appellee-Respondent. |) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila A. Carlisle, Judge
Cause No. 49G03-0003-CF-45176

April 24, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Reginald Durr appeals from a denial of his petition for alternative misdemeanor sentencing. He asks us to review whether the trial court properly denied this petition. Concluding that the trial court did not abuse its discretion in denying Durr's petition, we affirm.

Facts and Procedural History

On March 20, 2000, Durr was charged with one count of robbery, a Class C felony. He pled guilty to the lesser-included offense of theft, a Class D felony. He was sentenced February 28, 2001, to one year of incarceration, with ten days executed and the rest suspended to probation. The court ordered that Durr pay \$125.00 in court fees, and pay for the standard conditions of probation. At sentencing, the trial court advised Durr, "As long as you hold your end up on your probation, successfully complete it, upon a motion from your lawyer, within a year of today's date, I will reduce this to a Class A misdemeanor." Transcript at 12.

Durr completed the terms of probation, except for the payment of \$615 for his court fees and probation costs. The probation department requested that Durr's probation be unsatisfactorily discharged and recommended that a civil judgment be entered for fees, fines, and costs. The trial court granted this request on February 11, 2002. On June 16, 2006, Durr filed a petition for alternative misdemeanor sentencing, alleging that he had complied with all of the terms of his probation except for the payment of the court-ordered debt. The trial court denied this petition, noting that under the terms of the plea agreement, Durr would have been

eligible for alternative misdemeanor sentencing upon successful completion of the terms of his probation but that Durr was unsuccessfully discharged from probation.

Discussion and Decision

When a defendant is convicted of a Class D felony, the trial court may, under certain conditions, choose to enter a judgment of conviction of a Class A misdemeanor instead. Ind. Code § 35-50-2-7(b). “Sentencing decisions rest within the discretion of the trial court and are reviewed on appeal only for an abuse of discretion.” Leffingwell v. State, 810 N.E.2d 369, 371 (Ind. Ct. App. 2004).

Durr argues that the trial court abused its discretion when it declined to grant his petition for alternative misdemeanor sentencing, because Durr successfully completed all the terms of his probation except for the payment of court costs and fees. Durr believes his situation is similar to that of the appellant in Cooper v. State, 831 N.E.2d 1247 (Ind. Ct. App. 2005), trans. denied. In Cooper, the appellant asked us to review the appropriateness of a \$2,500 fine. Id. at 1249. We found the fine to be inappropriate, in part because the appellant’s inability to immediately pay the fine could jeopardize her eligibility for alternative misdemeanor sentencing. Id. at 1254. The present case differs from Cooper, however, because the appellant in Cooper asked us to revise her sentence under Indiana Appellate Rule 7(B).¹ Here, we are not reviewing the appropriateness of Durr’s sentence, but rather are reviewing the trial court’s denial of Durr’s petition for alternative misdemeanor

¹ Under this rule, we may revise a sentence if we conclude that it is inappropriate given the nature of the offense and the character of the offender.

sentencing.²

The trial court did not have jurisdiction to grant Durr's petition for alternative misdemeanor sentencing five years after Durr was sentenced.³ A trial court loses jurisdiction over a defendant once the term of probation has passed. White v. State, 560 N.E.2d 45, 46 (Ind. 1990). "Generally, a trial judge has no authority over a defendant after he or she pronounces sentence. Any continuing jurisdiction after final judgment has been pronounced must either derive from the judgment itself or be granted to the court by statute or rule." State v. Fulkrod, 735 N.E.2d 851, 852 (Ind. Ct. App. 2000), aff'd, 753 N.E.2d 630 (Ind. 2001) (citations omitted). In this case, the trial court stated that it would grant a petition for alternative misdemeanor sentencing within one year if Durr complied with the terms of his probation. The judgment therefore conferred continuing jurisdiction during the one-year period of probation. There is not a statute or rule that extends this jurisdiction and Durr did not petition for alternative misdemeanor sentencing until four years after he was discharged from probation.

² Even if we were to review Durr's sentence, Durr's situation is unlike the situation in Cooper. In Cooper, the appellant remained responsible for court costs and fees; it was only the \$2,500.00 fine that was determined to be unreasonable. Cooper, 831 N.E.2d at 1254. This fine was determined to be unreasonable in part because Cooper was ordered to pay her fine immediately. In another case, where a fine was not required to be paid immediately, we found the fine imposed to be reasonable because it was not due immediately. Johnson v. State, 845 N.E.2d 147, 152 (Ind. Ct. App. 2006), trans. denied. Durr was given one year to complete the terms of his probation, including the payment of court ordered costs and fees; they were not due immediately upon judgment. Also, the fact the Durr did not have the financial resources to pay these fees does not make the imposition of them unreasonable. "[O]ur courts have not limited the imposition of fines and costs to solvent defendants. . ." Id. at 153.

³ Under Indiana Code section 35-38-1-1.5, a Class D felony may be converted to a misdemeanor only within three years of conviction. This statute was not enacted until 2003, while Durr was sentenced in 2001. Even without relying on this statute, it is clear that the trial court did not retain jurisdiction over Durr four years after he was discharged from probation.

Even had the trial court retained jurisdiction over Durr, it did not abuse its discretion in denying Durr's petition. The court was given authority under the plea agreement to reduce Durr's felony conviction to a misdemeanor if Durr successfully completed the terms of his probation. "[I]t is well established that a plea agreement is contractual in nature and binds the defendant, the State, and the trial court. The trial court is given the discretion to accept or reject a plea agreement, and if it accepts the agreement, it is strictly bound thereby." Jackson v. State, 816 N.E.2d 868, 869-70 (Ind. Ct. App. 2004). At Durr's sentencing hearing, the trial court stated that it would reduce the felony to a misdemeanor if Durr successfully completed the terms of his probation and requested this reduction within a year. Durr neither successfully completed the terms of his probation nor requested this reduction within the time period specified by the court. Because Durr did not fully comply with the terms of his plea agreement, the trial court acted within its discretion in denying Durr's petition for alternative misdemeanor sentencing.

Conclusion

The trial court did not abuse its discretion in denying Durr's petition for alternative minimum sentencing. We affirm the decision of the trial court.

Affirmed.

BAKER, C.J., and DARDEN, J., concur.